United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

75-4162

To Be Argued By
WALLACE MUSOFF

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-4162

SEYMOUR SILVERMAN, ET AL.,
Petitioners-Appellants,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee.

B
P/S

REPLY BRIEF FOR PETITIONERS-APPELLANTS

WAGMAN, CANNON & MUSOFF, P.C.
136 East 57th Street

New York, N. Y. 10022
Tel. No. (212) 753-2900

WALLACE MUSOFF
Of Counsel

TABLE OF CONTENTS

CITATIONS

CASES:

Miscellaneous

In The

United States Court of Appeals

For the Second Circuit

SEYMOUR SILVERMAN, et al.,	)	
Petitioners-Appellants,	)	
v.	)	Docket No. 75-4162
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent-Appellee.	)	

REPLY BRIEF FOR THE PETITIONERS-APPELLANTS

Preliminary Statement

This is a reply to the Commissioner's brief filed in the United States Court of Appeals for the Second Circuit and served upon the petitioners-appellants on December 3, 1975.

REPLY ARGUMENT

I.

COMMISSIONER'S-APPELLEE'S BRIEF FAILS TO NEGATE THE ARGUMENTS SUBMITTED IN PETITIONERS'-APPELLANTS' ORIGINAL BRIEF THAT:

1. THE TAX COURT'S DETERMINATION OF VALUE IS CLEARLY ERRONEOUS.

2. THE BURDEN OF PROOF WAS UPON THE COMMISSIONER OF INTERNAL REVENUE.

3. THE TAX COURT ERRED AS A MATTER OF LAW IN THE CRITERIA USED IN DETERMINING VALUE.

Petitioners'-Appellants' contention that the Commissioner had the burden of proof in the Court below is not controverted by the decisions cited in appellee's brief (p. 6). None of these decisions contradict and are distinguishable from Helvering v. Taylor, 70 F.2d 619 (2nd Cir. 1934), aff'd 293 U.S. 507 (1935), Kaufman v. Commissioner, 372 F.2d 789 (4th Cir. 1966), Federal National Bank of Shawnee, Oklahoma v. Commissioner, 180 F.2d 494 (10th Cir. 1950), and A & A Tool & Supply Co., et al. v. Commissioner, 182 F.2d 300 (10th Cir. 1950).

The cases cited and relied upon by the taxpayers are all in point. They pertain to patently erroneous and arbitrary determinations by the Commissioner and hold all that the taxpayer needs to do is to show such nature in the Commissioner's original determination. It is not necessary to show the correct amount of the tax. This principle has been called into play particularly

in cases dealing with valuation.[1/] The Commissioner's determinations in his statutory notices of deficiency were based upon a value of $48 a share. That such determinations were arbitrary and erroneous is evidenced by the complete failure of the Commissioner to set out a single fact in support of such value in his notices of deficiency and opting for $25 a share at the time of trial by introducing the appraisal report and testimony of Hugh MacMullan, III, which the Court below rejected as not being relevant for reasons set out in some detail in petitioners'-appellants' original brief.

The cases cited in respondent-appellee's brief[2/] while dealing with the burden of proof issue failed to establish the Commissioner's determination although in some cases erroneous, was so unjustifiable as to fall within the ambit of Helvering v. Taylor, supra. Nor did the trial courts in these cases so utterly reject the Commissioner's evidence that, in effect, no evidence of respondent remained upon which to make a determination.

In the present case, the Commissioner has acknowledged that his statutory notice was overstated by almost 100% from the amount opted for at the time of trial. Is the Commissioner

---

1/ Helvering v. Taylor, supra, dealt with stock valuation. Kaufman v. Commissioner, supra, dealt with value of land sale contracts. Federal National Bank of Shawnee, Oklahoma v. Commissioner, supra, dealt with basis value of insurance policies; A & A Tool & Supply Co., et al, v. Commissioner, supra, dealt with fair rental value of property.

2/ P.6, fn.2

contending that since he receded from his original position by almost 50%, the burden of proof does not fall upon him; but, if he adhered to his original position without submitting evidence and the Court found a material lesser amount, the burden would be upon him? Kaufman v. Commissioner, supra.[3/] Since the Court below has completedly rejected the data and methodology of the Commissioner's only expert, it is as if no evidence was submitted by the Commissioner. Under such circumstances the uncontradicted expert testimony of taxpayers' witnesses as well as the actual contemporaneous sales of 4790 shares to 17 unrelated persons must prevail.

The taxpayers reject the Commissioner's attempt to foist upon them the position of arguing that a trial court may not properly find a middle ground between taxpayers' and Commissioner's experts, or that the Commissioner has the burden of proof every time he presents evidence that varies from his original determination.

It is in the light of the facts of this case - no basis set out for the original determination, an admission that his statutory notice figure was overstated by almost 50%, the complete unreliability of the Commissioner's evidence and so found by the trial court - that the principles of Helvering v. Taylor, supra, and Kaufman v. Commissioner, supra, become applicable.

3/ Taxpayers' position is also supported by Cohan v. Commissioner, 266 F.2d 5, 12 (9th Cir. 1959) wherein the Court said "When the Commissioner's determination has been shown to be invalid, the Tax Court must redetermine the deficiency. The presumption is then out of the case. The Commissioner and not the taxpayer then has the burden of proving whether any deficiency exists and if so the amount. It is not incumbent upon the taxpayer under those circumstances to prove that he owed no tax or the amount of the tax which he did owe". See also MacCrowe's Estate v. Commissioner, 252 F.2d 293 (4th Cir. 1958).

The Commissioner-Appellee to support his contention that the Tax Court's valuation was not clearly erroneous proffers the appraisal report and testimony of MacMullan. That is like basing a value for stock in Company A on its only asset which is 100% of the stock of Company B whose only asset in turn is 98% of the stock of Company A. MacMullan's appraisal is worthless since it is replete with procedural and mathematical errors, founded on companies only vaguely related and certainly not comparable, and constructed on principles making use of non-applicable and invalid data. This has been fully discussed in appellant's original brief. The Tax Court itself rejected the basis of MacMullan's appraisal. (A 240, 256, 257). So how can MacMullan's appraisal now be advanced to support the Tax Court's finding?

The Commissioner, like the Court below, alludes to events occurring long after the gift and in no wise foreseen at the time of the gifts to support the Tax Court's finding of $25 a share. It should be obvious that the voting aspect of common stock loses its significance as a company becomes public. The recapitalization in June 1969 occurred at the same time as the approval of the contract with the underwriters. Whether one owns 100 shares of voting stock or non-voting stock in a public company with 1,000,000 shares outstanding makes very little difference as long as there is a disposable public market for both kinds of shares. A discount of 5% to 8% is not unusual in such instance. But, in a closely held corporation

the question of voting and informational rights is all important if one is going to try to dispose of said shares privately.

Taxpayers do not contend, as alleged by the Commissioner, that the Tax Court valued the Class B common stock of Modern Maid as of a date subsequent to the gifts. They do contend the Court used subsequent events unknown and not contemplated at the time of gifts to determine the valuation at the time of the gift. The Court's reference to October 1969 events, its discussion of what would be the taxpayers' method of marketing the stock, all take into consideration the fact that Modern Maid went public in October 1969. Suppose Modern Maid had not recapitalized in 1969 and then become publicly owned. Would the Tax Court's determination of value still be the same for the unmarketable, non-voting, non-dividend paying Class B common stock of Modern Maid? Shouldn't it be?

The Commissioner, as did the Court below, refers to the taxpayers' failure to call Ladenburg, Thalmann & Company as a valuation witness.

This point was not raised by the Commissioner in the Court below, for his then counsel knew that efforts by both parties to reach a knowledgeable person at Ladenburg, Thalmann & Company were fruitless since that person was in Texas, but his specific whereabouts were unknown.

Taxpayers do not question that a trial court does not have to adhere to the testimony of expert witnesses, but may find a value based upon other substantial evidence. But in this case, the appraisal method and procedures of the Commissioner's only expert has been proven to be so deficient, it was even rejected

by the Court below. What other pertinent and valid evidence was there for a Court to find a fair market value of $37 a share limited to the $25 requested by the Commissioner? Certainly not book value which was in the neighborhood of $13 a share, sales of similar shares to unrelated parties were at $10 a share with the purchaser receiving a "put" in case they wished to sell their shares; a price-earning factor of ten submitted by Smith, one of taxpayers' experts, was a multiple to be used if Modern Maid was a public company to which adjustments had to be made. It must be evident that the Tax Court (Judge Quealy) as stated was relying upon some expertise peculiar to the Judge (A 256, 257) and what occurred in June and October 1969, which events were in no way even a speck on the horizon in August and September 1968. There just isn't a scintilla of reliable, valid evidence as at August 21, 1968 and September 14, 1968 before the Tax Court to support a value of $25 a share for 77160 shares of non-voting, non-dividend paying stock in a closely held corporation with a consolidated book value of $13 a share.

Taxpayers' reading of Whitemore v. Fitzpatrick, 127 F.Supp. 710 (Conn 1954) does not support the Commissioner's statement that the Court there adopted an approach completely alien to that proposed by plaintiffs.[4/] In fact, the Court adopted an average of the values submitted by plaintiffs' three experts and most carefully explained the factors that motivated it to adopt plaintiffs' experts' views.

4/ P.12, fn. 5 of Appellee's brief.

While subsequent events at times may serve to show expectations, the Commissioner's reliance upon Hyman v. Nunan, 143 F.2d 425 (2nd Cir 1944), Blanchard v. United States, 291 F.Supp. 348 (Iowa 1968) and Couzens v. Commissioner, 11 B.T.A. 1040 (1928) is misplaced in the light of the facts in the instant case.

In Hyman v. Nunan, supra, the "subsequent event" taken into consideration was a declaration of a dividend two days after the assignment. As Judge Learned Hand stated "That they (the Assignors) supposed some dividends would be declared is plain; people do not make assignments of all dividends which may be declared within the next twenty-five days upon a single stock for the pleasure of drawing up the document."

In Blanchard v. United States, supra, the stock subject to gifts to six grandchildren was part of a family's controlling interest and was sold three weeks later to a buyer along with the rest of the family's controlling interest. The shares transferred by gift to the grandchildren represented 22.9% of the outstanding shares (458 out of 2000) and together with other family interests totalled 52.4%, a controlling interest. The Court valued the stock at the selling price since the sale was pending at the time of gift.

In Couzens, supra the Board of Tax Appeals limited its consideration of subsequent events to those entertained on the valuation date. The Board held (p. 1165):

> "It is true that value (March 1, 1913) is not to be judged by subsequent events. There is, however, substantial importance in the reasonable expectations entertained on that date. Subsequent events may serve to establish both that the expectations were entertained and also that such expectations were reasonable and intelligent....Such subsequent events as have no reasonable relation to the considerations of the date in question have been disregarded. We have not, by looking at subsequent events now known, found what the value would have been had they been definitely known on March 1, 1913. The only facts upon which our judgment of value has been predicated are those reasonably known on that date. These included not only those which had completely occurred, but also those which were in process and those which were reasonably in contemplation (at that date)." (emphasis added)

This opinion of the Board while predating the Supreme Court decision in Olsen v. United States, 292 U.S. 246 (1934) by some six years is wholly consonant with it.

Certainly the June 1969 recapitalization and public offering of stock by Modern Maid in October 1969, brought about by unsolicited and uncontemplated happenstances toward the end of 1968 and a suggestion to the son of the founder in March 1969 to consider the possibility of securing needed financing through a public underwriting were not occurrences in process or in contemplation at the date of the gifts.

The Court below as well as the Commissioner now have altered "in contemplation" to "this does not mean a second step in the giving process was not contemplated at some future date, irrespective of that occasion." (A331) In the Couzens case "in contemplation" was used by the Board to indicate some live mental process in being, if not yet reduced to a state of negotiating, i.e. in process. But that is a far cry from a nebulous possibility that in the far reaches of one's mind, perhaps even the subconscious, a hope, a wish existed that at a future date, irrespective of the occasion, Modern Maid would become a publicly owned company. It is this very gossameric thread of speculation, "the realms of possibility" that was condemned by the Supreme Court in Olsen v. United States, supra and we were admonished not to let "speculation and conjecture to become a guide for the ascertainment of value."

The Commissioner accepts the Tax Court statement that the "second step, (the recapitalization and going public) may not have been foreseen at the time of the gifts"...yet argues... "this does not mean that a second step in the giving process was not contemplated at some future date".

Just what is necessary for a taxpayer to disprove a negative of a state of mind? Can the taxpayer do any more than state so and so was not contemplated and show how subsequent events gave rise to certain happenings?

Bald statements by the Commissioner implying some comprehensive scheme of the taxpayers to make initial gifts in Class B Common Stock and in the next year to adopt a second recapitalization as a second step in the giving process, no matter how often repeated, is belied by the record in the case.

Assume a gift of undeveloped farm land to children in September of one year which is visited by some geologists in April of the next year when their plane made a forced landing. This near disaster turns out to be fortuitous for their interest aroused by the topography leads to oil and gas discovery and development. Should one argue that this second step of development was contemplated at the time of gift and was a second step in the giving process?

The Commssioner errs when he states the reorganization (recapitalization of June 1969) was not pursuant to the directions of the underwriters as a preliminary step in the public offering.[5/] The recapitalization was voted the same day as the approval of the contract with the underwriters (Exhibit O).

Jack Silverman testified as follows: (A 288, 289)

Q. The reorganization in 1969, the terms of it, who suggested that? The second reorganization.

A. The recapitalization was suggested by Ladenburg, Thalmann.

5/ Appellee's brief, p. 13

Q. I mean that wasn't one that your organization decided before that?

A. No, this was done in 1969 by Ladenburg.

Q. I'm sorry, I didn't mean to interrupt. The recapitalization in 1969 was done by whom - the terms of it was done by whom?

A. The terms of it were done by Ladenburg, Thalmann. They were the underwriters.

Q. They wanted to make a marketable situation?

A. That is right.

Neither Hyman v. Nunan, supra, nor Beck v. Commissioner, 15 T.C. 642, aff'd 194 F.2d 537 (2nd Cir. 1952) cited by the Commissioner supports the argument the subject gifts should be valued as part of majority control. First and foremost the Class B Common Stock of Modern Maid played no part in the control of the Company nor was it foreseen at the time of gifts that it would become voting stock. Secondly, the facts in the cited cases are quite inapposite.

The Hyman case did not turn upon, the Court didn't even refer to, the percent of interest being transferred. The valuation was of an assignment of dividends to be paid in the next twenty-five days. The Court pointed out the Commissioner's presumption of value stood unrebutted since the "testimony contains not a syllable on that issue". The Beck case involved the determination of a March 2, 1919 value of iron ore lands for depletion purposes. The petitioner in that case was a

one-sixth beneficiary in the property left by her father. For estate tax purposes the said lands were determined to have a value of $5,497,576 and the Tax Court found petitioner's one-sixth interest to be a pro-rata $916,263. This is entirely proper under the circumstances. To have used any lesser value for each beneficiary would have necessarily meant the estate tax value would never be recovered. Moreover, the regulations provided that the basis of assets received from an estate shall be the value determined in estate tax proceedings.[6/]

The Commissioner argues that "the gifts of stock cannot be divorced from the fact of control within the family and therefore should not be valued as stock held by an outsider." Citing Hamm v. Commissioner, 325 F.2d 934 (8th Cir. 1963).

The taxpayers reading of Hamm does not support the Commissioner in the case now before this Court. In Hamm, Judge Blackmun reviewed in some detail the facts in the case which were sufficient to support the finding of the Tax Court of a value of $8,506 a share when the uncontested actual value of the underlying assets was $11,510 a share.

6/ Reg. 103, Sec. 19.113(a)(5)-1(c) applicable to Beck provided:

> "Fair Market Value - For the purpose of this section, the value of property as of the date of death of the decedent as appraised for the purpose of the Federal estate tax, or if the estate is not subject to such tax, its value appraised at the date of the death of the decedent for the purpose of State inheritance or transmission taxes, shall be deemed to be its fair market value at the time of acquisition."

With regard to the stock being a minority interest, Judge Blackmun stated:

"...the minority interest aspect was considered by the Court (below) and that its determination was made as to that specific interest." The Court did not pass on the effect of family control. It merely posed a question which it did not have to resolve. However, in Whitemore v. Fitzpatrick, supra Judge Hincks met the issue head-on and held gifts of stock to three sons in a family corporation had to be valued separately, even though the gifts in the aggregate represented control of the Company.

It is interesting to note that the Hamm case also took up the question of who has the burden of proof in certain valuation cases, and cited with approval Cohan v. Commissioner, supra, although it distinguished the facts in that case from those in Hamm.

In Blanchard v. Commissioner, supra, as noted previously, the stock subject to gift when added to the donor's shares represented control and arrangements to sell said control had already been made by the donor and her family. The total interest sold to Life Investors of Iowa, Inc., was 52.4% in the State Savings Bank of Council Bluffs. The interest transferred to trusts for seven grandchilrden amounted to 22.9%. Obviously, Life Investors was buying control and was

buying the stock as one block. It was not interested in only part of the 52.4%. The sale was effected twenty-one days after the gifts. Such a case for all practical gift tax purposes is equivalent to a sale by the donor and a gift of the proceeds to the donee-trusts.

The Commissioner notes that petitioner's expert, Gordon Smith, valued the Class A Common Stock of Modern Maid at $29.81 a share and implies the Class B could be similarly valued as part of family holdings.

What escapes the Commissioner is that Smith's valuation of the Class A stock was computed as if Modern Maid was a publicly owned company after deducting the cost of going public: It assumes the Class A stock is fully registered. But even shares of publicly owned companies sell at substantial discounts if not registered and capable of sale to the public. Smith's table in his appraisal report (A 74) shows discounts varying from 16.7% to 71.4% or an average of 44% for non-registered voting shares of publicly traded companies even when subsequent registration is anticipated. One-half of those registered securities showed discounts of over 40% and their average was 57.2% (A 66). Accordingly, Smith allowed for a discount of 60% for the fair Class B Common Stock for the reasons set out on pages 15 through 19 of his report (A 65-69).

It is noted that Appellee's brief does not address itself to the cases cited in petitioners'-appellants' original brief to show why they are not applicable and ignores completely the arguments advanced under Point III, sections 2 and 3. Petitioners trust this Court does not similarly deign those arguments unworthy of consideration. Does "fair market value" contemplate, after all the niceties and refinements of language and theory, any amount other than that price which could be realized in the marketplace? A share of stock may be worth $50, but if $5 is all that can be realized on a certain date, that is the market value. A stock may actually be valueless but if $60 can be realized in the marketplace (e.g. Westec Corp) that is the value for tax purposes. The law's reference is to "market value" not actual value.

In this connection, attention is respectfully called to an excerpt of a recent article on the New York Times financial page which vividly illustrates the marked effect upon market values of a limitation in a public trading medium.

> ".....The impact of delisting can be far-reaching. The market for City Stores shares was impeded from the moment the exchange announced its decision to suspend the stock from trading before the opening on November 11. This is because the exchange said that transactions following the announcement and prior to November 11 would be done on a cash or same-day delivery basis.
>
> "Thereafter no bids or offers appeared on quotation machines in brokers' offices. Quotations are generally reserved for stocks that trade in the "regular way" - that is, on a five-day delivery basis.

"Brokers say that a number of investors in City Stores bought shares of the money-losing company on the theory that a book value of $23.55 a share made the stock an attractive speculation at $2 a share.

"Another factor in the exchange's decision was a deficit position. City Stores lost $4.75 million during the last three years.

"However, the company generated substantial cash during that period through depreciation charges of $16,340,000. Its "cash flow," which is depreciation less losses, amounted to a comfortable $11,590,000.

"The company is clearly in no danger of default, since it has $47.5 million in working capital. Beyond that, City Stores has $76.8 million in net tangible assets.

"The consequences of delisting were also severe for the shareholders of Bond Stores. When the decision was announced by the exchange on March 14, the price of the company shares was further depressed.

"On July 13, Bond Stores' management offered shareholders $6 cash for every share tendered to the company.

Bond Stores, like City Stores, had been losing money. Also like City Stores, Bond was rich in assets and working capital. The book value at the time of management's offer was well over $20 a share.

"In view of the limited market for Bond shares, it was difficult for minority shareholders to challenge the assessment of investment bankers that Bond's offer of $6 was a fair one. The bankers stated that one of the factors influencing their judgment was the fact that Bond Stores had been selling at $3 a share prior to the offer - in over-the-counter trading. This price was established in that market after the decision by the Big Board to suspend trading."

The above article reflects the drop in values caused by delisting. Imagine the effect if no public market existed at all - not even over-the-counter!

It is that realizable value in the marketplace for which petitioners presented the reputable expert opinion of Harold Wit and Herbert Cannon in the same manner that plaintiff presented expert testimony of marketplace values in Whitemore v. Fitzpatrick, supra.

Taxpayers submit that the Tax Court's determination of value is not binding in this case since there is no substantial competent valid evidence in the record to sustain it, the determination is against the weight of the evidence and was induced by an erroneous view of the law. Campbell County State Bank, Incorporated of Herreid, South Dakota v. Commissioner, 311 F.2d 374 (8th Cir. 1963).

CONCLUSION

The facts and arguments advanced by the Commissioner fail to support the position of the Court below and the taxpayers respectfully pray this Court to reverse the decisions of the Court and remand the case for entry of decision under Tax Court's rule Number 155 based upon a value of $5 a share.

Taxpayers also pray this Court allow them costs of this proceeding.

Respectfully submitted,

Wagman, Cannon & Musoff, P.C.
Attorney for Appellants

December 15, 1975

Wallace Musoff
Of Counsel

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

- x

SEYMOUR SILVERMAN, et al. :

Petitioners-Appellants, :

-against- :

COMMISSIONER OF INTERNAL REVENUE, :

Respondent-Appellee. :

- x

Docket No. 75-4162

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the reply brief herein has been made on opposing counsel by sending by certified mail three copies thereof on this twelfth day of December, 1975, in an envelope with postage prepaid, properly addressed as follows:

The Honorable Scott P. Crampton
Assistant Attorney General
Tax Division
United States Department of Justice
Washington, D. C. 20530

Wallace Musoff

Wallace Musoff, Esq.
Attorney for Petitioners-Appellants

CERTIFICATION BY ATTORNEY

STATE OF NEW YORK
COUNTY OF ss.:

The undersigned, an attorney admitted to practice in the courts of New York State, certifies that the within has been compared by the undersigned with the original and found to be a true and complete copy.

Dated: _____

VERIFICATION, CORPORATE OR INDIVIDUAL

STATE OF NEW YORK
COUNTY OF ss.:

, being duly sworn, deposes:

Deponent is the of , a corporation, in the within action;

Deponent has read the foregoing and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein alleged upon information and belief, and those matters deponent believes to be true.

The grounds of deponent's belief as to all matters not stated upon deponent's own knowledge are as follows:

Sworn to before me,
this day of , 19 . _____

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK } SS.:
COUNTY OF }

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at
That on the day of 19
at No.
deponent served the within
upon
the herein,
by delivering a true copy thereof to h personally.
Deponent knew the person so served to be the person mentioned and described in said papers as the therein.

_____

Sworn to before me,
this day of 19

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK } SS.:
COUNTY OF }

being duly sworn, deposes and says; that deponent is not a party to the action, is over 18 years of age and resides at
That on the day of 19
deponent served the within
upon
attorney(s) for
in this action, at
the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in – a post office – official depository under the exclusive care and custody of the United States post office department within New York State.

_____

Sworn to before me,
this day of 19

NOTICE OF ENTRY

Sir:- Please take notice that the within is a (certified) true copy of a
duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.

WAGMAN, CANNON & MUSOFF, P. C.

Attorneys for

Office and Post Office Address

136 EAST 57TH STREET
NEW YORK, N. Y. 10022

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:- Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.
one of the judges of the within named Court, at

on the *day of* 19
at *M.*
Dated,

Yours, etc.

WAGMAN, CANNON & MUSOFF, P. C.

Attorneys for

Office and Post Office Address

136 EAST 57TH STREET
NEW YORK, N. Y. 10022

To

Attorneys for

Index No. 75-4162 *Year 19*

UNITED STATES COURT OF APPEALS
~~FOR THE SECOND CIRCUIT~~

SEYMOUR SILVERMAN, et al.,

Petitioners-Appellants,

-against-

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee

CERTIFICATE OF SERVICE

WAGMAN, CANNON & MUSOFF, P. C.

Attorneys for Petitioners-Appellants

Office and Post Office Address

136 EAST 57TH STREET
NEW YORK, N. Y. 10022
(212) 753-2900

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated, 19

Attorney(s) for

Dated 19

ATTORNEY'S AFFIRMATION

STATE OF NEW YORK
COUNTY OF ss.:

The undersigned, an attorney admitted to practice in the courts of New York State, hereby affirms as true under all the penalties of perjury that affiant is

the attorney(s) of record for
in the within action; that affiant has read the foregoing
and knows the contents thereof; that the same is true to affiant's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that those matters affiant believes to be true. Affiant further says that the reason this verification is made by deponent and not by

The grounds of affiant's belief as to all matters not stated upon affiant's knowledge are as follows: